

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In re Applications of) MM Docket No. 93-87
RAYMOND W. CLANTON) File No. BPH-911216MC
LOREN F. SELZNICK) File No. BPH-911216MD
For Construction Permit)
for a new FM Station on)
Channel 279A in El Rio,)
California)
To: Administrative Law Judge
John M. Frysiak

REPLY TO CITATION

Raymond W. Clanton, by his attorney, hereby replies to the "Citation to Recently Issued FCC Decision", filed June 16, 1994, filed Loren F. Selznick in the above-captioned proceeding. As shown herein, Selznick misreads the decision; it is not on point. Moreover, based upon the facts in the record in this case, the decision is irrelevant, even if Selznick's reading were correct.

Selznick refers to the Commission's decision in David A. Ringer, FCC 94-126, released June 8, 1994. She asserts that it holds "that an applicant's cost budget should be liberally construed particularly where the budget includes a 'miscellaneous' category." Selznick claims that this holding counters Clanton's demonstration that Selznick left significant items out of her budget.

However, the record does not support a finding that

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Selznick's 1991 budget includes a "miscellaneous" category. Her budget does not even appear in the hearing record. While there is a reference to it beginning at page 86, line 19 of the hearing transcript, neither the actual budget nor its details were entered into evidence. The factual predicate to Selznick's motion, that her budget contained an item entitled "Miscellaneous", is totally lacking.¹ Accordingly, her Citation is inappropriate.

In addition, even had Selznick's budget contained a "miscellaneous" item, Ringer would not be on point. There, the Commission considered a cost summary which omitted the first three months' operating costs. The applicant asserted that it considered such costs, and included them in a category identified as Miscellaneous, spares, and contingency." In preparing its cost estimates, this applicant followed the format found in a brochure prepared for the Commission, and distributed at a Commission-sponsored seminar. The Commission went on to state

significantly, a note on the sample cost summary explaining that certain enumerated kinds of expenses were *not* included made no reference to operating expenses, and the indicated expense of "Miscellaneous, spares and contingency" was larger than any other itemized expense listed in the sample, comprising approximately fourteen percent of the overall total. An inference might understandably be drawn from these indications that the "Miscellaneous, spares and contingency" entry included an allowance for operating expenses, notwithstanding

¹ In fact, the budget does not have a "miscellaneous" or similar item.

the entry's literal inaptness for that purpose.

The Commission concluded, "[I]n view of these circumstances, and in view of the fact that no question was ever raised as to the adequacy of WBC (the applicant)'s overall cost estimate, we find that WBC's explanation is plausible." (Emphasis supplied.)

It is clear that Ringer is limited to the specific facts of that case. The Commission did not want to disqualify an applicant who followed a budgetary format which it had approved, and whose overall cost estimate was unchallenged. Ringer does not stand for the proposition that inclusion of a "miscellaneous" category absolves applicants of all deficiencies. Taken to its logical conclusion, Selznick's approach would permit an applicant to have only one item, "miscellaneous", in its budget, and yet be found financially qualified.

In sum, Clanton's showing that Selznick's original budget lacked significant necessary costs, and therefore that she was financially unqualified at the time of her original filing, even if the loan from Joseph P. Dailey is credited², remains valid. There is no reason to change Clanton's ultimate conclusion that Selznick's application must be denied for lack of financial qualifications.

Therefore, this case may be decided without reference to

² Clanton demonstrated that Selznick may not rely on the purported loan from Dailey for a number of reasons, e.g. lack of a writing, failure to discuss terms, failure to provide a written financial statement, etc.

the standard comparative issue. The freeze on comparative decisions does not apply and an initial decision granted Clanton's application should be issued.

Respectfully submitted,

RAYMOND W. CLANTON

By 
Jerrold Miller
His Attorney

June 20, 1994

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 19⁹⁴

a copy of the foregoing document was placed in the United States mail,
first class postage prepaid, addressed to the following:

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